

Syllabus

IN THE MATTER OF

J. H. CRITES, JOHN G. DEE, W. J. ROSS, M. W. McQUAID
AND M. L. CHANDLERCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 785. Complaint, June 11, 1921—Decision, Aug. 19, 1927*

Where certain individuals, officers or trustees in an oil company organized by them under a so-called declaration of trust; in advertising, offering for sale, and selling its shares or stock,

- (a) Represented in newspaper advertisements, prospectuses, and other advertising matter that the company had holdings, amounting to hundreds, later increasing to thousands, of acres, situated in proven oil areas, and mostly in the very heart of the most wonderful oil-producing territory in the world, the fact being that only a small proportion of the company's holding was located in areas understood to be or considered as proven oil territory;
- (b) Represented that every acre of its holdings had increased in value by the bringing in of producing wells by other companies on near-by and surrounding tracts, that it owned 200 acres southeast of a certain well on the Ross Farm, surrounded on all sides by drilling wells, 160 acres in Stephens County, Tex., just north of Breckenridge, and offsetting the Humble deep test, with the Ranger Field lying north and west from the adjoining county, a tract in Block 45, Burkburnett, the "Wonder Field" with production on all sides, and sure of oils from various sands, and $2\frac{1}{2}$ acres in said "Wonder Field" close in among the producers and lying just west of certain named wells, south of the "great Marine and Humble wells", the fact being that there was no production of oil nearer the tract southeast of the aforesaid farm than production 1 mile distant consisting of not more than 40 barrels a day; that no drilling operations were conducted nearer to the Stephens County holdings than from 8 to 10 miles, that the alleged Burkburnett tract was west of Burkburnett and one-half mile from any production whatever, dry holes had been drilled on all sides of it, there had been no production of any kind in its vicinity, and the company did not own the $2\frac{1}{2}$ acres in question, but only an undivided one-third interest in a tract of $7\frac{1}{2}$ acres of which the $2\frac{1}{2}$ acres were a part; and that the well drilled on the tract in question proved to be a dry hole;
- (c) Represented that it was drilling four wells, "tapping" the heart of the proven field, the fact being that it drilled only one well in its entire history; and that it neither conducted nor commenced any drilling operations on its Stephens County holdings, but forfeited the lease; and
- (d) Represented that the company was a dividend-paying company and would devote 50 per cent of its production to such purpose, the fact being that at no time had said company had earnings or profits or production from or out of which dividends could have been legitimately paid, or prospects from which they could have believed or did believe that it would probably pay dividends;

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With the effect of misleading and deceiving a substantial portion of the public into purchasing the stock of the company in question in the belief that it owned producing oil properties, was on a dividend-paying basis, was devoting 50 per cent of its production to payment of dividends, and owned extensive leases in various oil-producing areas in the immediate vicinity of large producers, the proposed development of which would so expand the production of the company as greatly to enhance the value of the stock so purchased:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson and Mr. John M. Burkett for the Commission.

Mr. J. A. Collins, of Fort Worth, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Reciting the public interest involved, the Commission charged respondent individuals with advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce, in that, in selling shares of stock in the O-Tex Production Co., a joint stock association, with principal place of business at Fort Worth, organized by them under a declaration of trust, they made numerous false and deceptive statements concerning the business, property, and prospects of said company, in their advertisements in newspapers of general circulation, and in circular letters and advertising matter circulated throughout the United States, such false and misleading statements including statements to the effect that the company owned leases on 752½ acres of land in proven oil territory, and had four wells in operation, the fact being that no oil had ever been produced from the lands in question and that the company had drilled but one well, which produced no oil, and made other statements of like false and misleading character, with the effect of misleading and deceiving the public and inducing numerous persons to purchase stock of such association, and calculated so to do.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondents, charging them with the use of unfair methods of competition in violation of law.

Thereupon all of the respondents entered appearances and filed answers by their attorney. Formal hearing was had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by the attorney for the Commission, the respondents failing to file brief within the time prescribed, or at all, and thereupon the matter having come on regularly for final decision and the Commission having considered the record and being advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. H. Crites, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler, are and at all times herein-after mentioned, were residents of the city of Fort Worth, Tex. On or about February 10, 1919, respondent, J. H. Crites, in conjunction with respondents, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler, organized under a so-called declaration of trust, the O-Tex Production Co., with a capitalization of \$250,000 divided into 25,000 shares of stock at the par value of \$10 each. Respondents J. H. Crites, John G. Dee, and W. J. Ross became and during all of the time herein mentioned, were the trustees of said company. Respondent M. W. McQuaid for a brief period, and thereafter respondent, M. L. Chandler, acted as its secretary and treasurer.

PAR. 2. After the organization of the O-Tex Production Co., respondent, J. H. Crites, transferred to it in exchange for one-half of its capital stock, or 12,500 shares, oil and gas leases held by him of or on 752½ acres of land. The other half of its said capital stock, respondents, J. H. Crites, John G. Dee, W. J. Ross, and M. W. McQuaid, advertised, offered for sale and sold, in the various States of the United States, in competition with other persons, partnerships, corporations and associations engaged in the sale of oil stock and other securities in said commerce, and caused certificates of said stock sold to be transported from Fort Worth, Tex., to purchasers thereof in the various other States of the United States. In connection with advertising, offering for sale and selling said stock, and as inducement to its purchase, respondents caused to be transported by mail, and distributed among purchasers and prospective purchasers of stock and securities, in the various States of the United States, newspapers with advertisements published at the instance of respondents, prospectuses, leaflets, circulars, circular letters and other advertising matter containing, among others, the following false and misleading statements and representations: That the said company owned 752½

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acres of oil and gas leases which original holdings were later increased to 3,000 acres, all of them situated in proven oil areas and most of which had been proven to be in the very heart of the most wonderful oil-producing territory in the world; that every acre of the holdings had increased in value by the bringing in of producing wells by other companies on tracts near to and around leases of the O-Tex Production Co.; that the company was drilling four wells, "tapping" the heart of the proven field; that the company owned 200 acres southeast of the so-called Duke and Knowles well on the Ross Farm, surrounded on all sides by drilling wells, 160 acres in Stephens County, Tex., just north of Breckenridge, and offsetting the Humble deep test, with the Ranger Field lying north and west from the adjoining county; that it owned a tract in Block 45, Burkburnett, describing it as "The Wonder Field", with production on all sides, and sure of oil from various sands, and $2\frac{1}{2}$ acres in the so-called "Wonder Field" close in among the big producers, and in fact lying just west of the Wichita Southern and Sibley-Taylor wells, south of the "great Marine and Humble wells"; and that the O-Tex Production Co. was a dividend-paying company and would devote 50 per cent of its production to this purpose; whereas, in truth and in fact, only a small proportion of the holdings of the O-Tex Production Co. was located in the areas understood to be or considered as proven oil territory; it drilled only one well in its entire history; there was no production of oil nearer its tract southeast of the Duke and Knowles well than 1 mile, consisting of no more than 40 barrels per day; the said company neither conducted nor commenced any drilling operations on the holdings in Stephens County, Tex., but forfeited the lease and, indeed, no drilling operations were conducted by others nearer to such holdings than from 8 to 10 miles; its alleged Burkburnett tract was west of Burkburnett and one-half mile from any production whatever; dry holes had been drilled on all sides of it and there had been no production of any kind in its vicinity. When the representations hereinbefore set forth⁶ were made by respondents regarding this particular tract, the O-Tex Production Co. did not own the $2\frac{1}{2}$ acres described as in the "Wonder Field" but only an undivided one-third interest in a tract of $7\frac{1}{2}$ acres of which the said $2\frac{1}{2}$ acres was a part. The other two-thirds were owned by the White Star Oil and Gas Co. and the Royal Duke Co. The well drilled on this tract proved to be a dry hole, and in any event the O-Tex Production Co. would have been entitled to only one-third of the profits therefrom, and at no time theretofore has said company had earnings or profits or production from or out of which dividends could have been legitimately paid, or prospects from which respondent could

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have believed or did believe that the O-Tex Production Co. would probably pay dividends.

PAR. 3. The above and foregoing false and misleading representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of stock of the O-Tex Production Co. in the belief that it owned producing oil properties, was on a dividend-paying basis, was devoting 50 per cent of its production to payment of dividends, and that it also owned extensive leases in various oil-producing areas in the immediate vicinity of large producers, the proposed development of which would so expand the production of the company as greatly to enhance the value of the stock so purchased.

CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of respondents, the testimony and evidence, brief of counsel for the Commission, respondents having failed to file brief, and the matter having come on regularly for decision and the Commission having thereupon made its report stating its findings as to the facts with its conclusion that the respondents, J. H. Crites, John G. Dee, W. J. Ross and M. W. McQuaid, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents, J. H. Crites, John G. Dee, W. J. Ross, and M. W. McQuaid, cease and desist from publishing, circulating or distributing in interstate commerce, in connection with offering for sale or selling the stock of the O-Tex Production Co. or of any other association, partnership, or corporation, any magazine, pamphlets, prospectuses, circulars, circular letters, or any other written or printed matter containing false or misleading statements or representations concerning the property, resources, assets, production,

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management or financial condition of the O-Tex Production Co. or of any corporation, association, or partnership, stock of which respondents, or either or any of them, are selling or offering for sale in interstate commerce.

It is further ordered, That the same be and hereby is dismissed as to respondent, M. L. Chandler.

It is further ordered, That said respondents shall within 60 days from the date of the service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied therewith.

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IN THE MATTER OF

S. F. SHEPARD, ROCKWOOD BROWN, A. L. TODD, R. ALLYN LEWIS, R. J. WISWELL, D. M. LEOPOLD, H. P. HANSON, E. H. ESHLEMAN, F. L. MOORMAN, AND E. H. McARTHUR

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 857. Complaint, Dec. 8, 1921—Decision, Aug. 19, 1927

Where an individual interested in certain oil companies promoted and organized by him in pursuance of certain declarations of trust, to which companies he had conveyed their various holdings and leases in return for one-half of their capital stock, retaining a financial interest in the sale of the remaining stock, an interest in oil and gas produced from various properties so conveyed, and an interest in the management of the companies through his power under the so-called declarations of trust to name the trustees; in promoting the sale of the stock or shares in various companies organized by him as above set forth,

- (a) Represented said different companies, as the case might be, in prospectuses, and other advertising matter as owners of various specified holdings in the Texas "Burkburnett" oil-producing district, omitting from his aforesaid advertising and withholding and concealing from purchasers and prospective purchasers any and all information concerning the real origin of the companies so promoted by him, the source from and conditions or circumstances under which their various properties were acquired, the method of selecting trustees, officers or members, his own connection therewith, and the reservations, profits and advantages derived and to be derived by him from the sale of the several stocks, and from the development and production of the various properties represented by him as the valuable holdings of the company;
- (b) Represented that a certain $2\frac{1}{2}$ acres of one of the companies was surrounded by producing wells and that another acre owned by it in a certain tract was in the center of big production, the fact being that such tracts were respectively not surrounded by production, and some distance from producing wells; and
- (c) Represented that "the officers and directors" of one of the companies specified, would "be elected by the stockholders, therefore, this company will be controlled by and for the benefit of the stockholders through men selected by themselves and not by promoters, as is usually the case with corporations", the fact being that the trustees to administer the affairs of all companies were selected by the aforesaid individual and were controlled and directed by him and were at no time controlled by or for the benefit of the stockholders;

With the effect of misleading and deceiving a substantial portion of the public into purchasing stock in the various companies in the belief that they owned valuable properties, the administration of which would be controlled by their stockholders, who would be entitled to the undivided earnings or profits of the companies, instead of only a part thereof: